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Cases, Regulations, and Statutes

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held that futures trading was hedging and not speculation if the commodity transactions were an integral part of the taxpayer's business and the taxpayer acquired the actuals in the course of business.[13] Thus, "pre-hedging" is permitted (before a crop is planted and before feeder animals are acquired) but "post-hedging" which involves attempts to hedge after the commodity is sold is not a hedge but is speculation.[14]

"Direct relation" test. Under the direct relation test, there must be a reasonable quantitative relationship between the taxpayer's involvement with the actuals and the commodity market transaction if the transaction is considered to be a hedge.[15] For the direct relation test to be met, the amount of futures trading in the particular commodity involved and the timing of purchases and sales must be related to the position of the taxpayer in the actuals.[16]

Wrong entity hedging

A problem that is becoming increasingly common with multiple-entity business plans, with the overall farming or ranching operation divided between or among entities, is in having the hedging transactions carried on by the correct entity. In *Pine Creek Farms, Ltd. v. Comm'r*,[17] a corn, soybean, cattle and hog operation was divided among several entities. The taxpayer, a C corporation, was engaged in producing corn, soybeans and cattle; the hog operation was handled by two other corporations, one for farrowing and one for finishing. The taxpayer corporation in the tax year in question had $40,934 of hedging losses of which $6,305 was from hog hedges.[18] IRS determined the $6,305 was a capital loss for the taxpayer and the Tax Court agreed.[19] IRS argued that the taxpayer was not engaged in the hog business and could not have hedging transactions in hogs. It didn't matter that a shareholder of the taxpayer C corporation *was* engaged in hog production through the other two corporations.

A 1997 private letter ruling addressed a similar question.[20] In that ruling, a dairy farm was carried on by an S corporation but a shareholder attempted to hedge feed supplies. The S corporation's business was not attributed to the shareholder for hedging purposes.

In conclusion

Among other points to watch, it is vital for hedging status that the hedging transactions be carried on by the correct entity.

FOOTNOTES

1 See generally, 4 Harl, *Agricultural Law* § 27.03[8][d] (2001); Harl, *Agricultural Law Manual* § 4.02[6] (2001).

2 See I.R.C. § 1256(a)(3).

3 I.R.C. § 1256(a)(3).

4 I.R.C. § 1211(b).

5 I.R.C. § 1256(e)(1).

6 Pine Creek Farms, Ltd. v. Comm'r, T.C. Memo. 2001-176.

7 Treas. Reg. § 1.1221-2.

8 Treas. Reg. § 1.1221-2(c)(l)(iv).

9 Treas. Reg. § 1.1221-2(c)(l)(vi).

10 Treas. Reg. § 1.1221-2(c)(l)(ii).

11 See Harl, *Agricultural Law* § 27.03[8][d][iii] (2001); Harl, *Agricultural Law Manual* § 4.02[6] (2001).

12 E.g., Stewart Silk Corp. v. Comm'r, 9 T.C. 174 (1947).

13 E.g., Corn Products Refining Co. v. United States, 350 U.S. 46 (1955). See also, Crisp v. Comm'r, T.C. Memo. 1989-668 (futures transactions required as part of loan agreement were integral part of cattle raising business; gains were ordinary income).

14 Patterson v. Comm'r, T.C. Memo. 1981-43, *aff'd in unpub. Op.*, 676 F.2d 705 (8th Cir. 1982) (farmer sold soybeans at harvest because of inadequate storage and bought soybean futures; transactions were held to be speculative, not hedges, on grounds taxpayer was not protecting against risk of loss as to actual commodities).

15 See, e.g., Comm'r v. Banfield, 122 F.2d 1017 (9th Cir. 1941) (mere fact of purchase and sale of wheat futures by wheat farmer did not make commodity transactions hedges).

16 E.g., Lewis v. Comm'r, T.C. Memo. 1980-334 (volume of futures trading by cattle feeder was three to five times the cattle on hand).

17 T.C. Memo. 2001-176.

18 *Id.*

19 *Id.*

20 Ltr. Rul. 9720003, January 15, 1997.

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ANIMALS

CRIMINAL NEGLECT. The defendant operated for several years a boarding house for the defendant's and other's horses. The defendant was convicted of two counts of violating Iowa Code § 717.2(2) for failing to properly feed two horses. The case does not disclose any reasons for the lack of care. The two dead horses were discovered by a sheriff's deputy at the edge of a field, observable from a road. The deputy took several photographs from a neighboring property and obtained a search warrant to have a veterinarian examine the horses for cause of death. The defendant claimed that the horses died in a storm; however, the expert witnesses testified that the horses died from starvation. The defendant challenged the jury verdict of guilty on both counts on two issues: (1) that the statute provided for only one violation involving one period of neglect and (2) there was no probable cause to support the search warrant. On the first issue the court agreed that the statute limited to one the number of offenses with which a defendant could be charge for any uninterrupted period of neglect. Since the two horses died together, the court held that the defendant could be charged with only one violation. On the second issue, the court held that sufficient probable cause for the warrant was provided by the deputy's personal experience with observing animals which had died from starvation and were under the defendant's care. **State v. Wells, 629 N.W.2d 346 (Iowa 2001)**.

BANKRUPTCY

GENERAL -*ALM* § 13.03.*

EXEMPTIONS

ADDITIONAL CHILD TAX CREDIT. The debtor claimed an exemption for an income tax refund. The exemption was claimed under Ky. Rev. Stat. § 205.220(3) for benefits received under federal, state or local public assistance legislation. The debtor claimed that the refund resulted from the additional child income tax credit allowed under I.R.C. § 24(d). The court applied a three part inquiry as to whether the tax credit was in the nature of public assistance: whether the credit had a public assistance purpose, whether the credit was refundable, and at what income level did the credit phase out. The court held that the additional child credit had the public assistance purpose to help families with three or more children and was refundable. However, the court held that the credit was not eligible for the exemption because the credit was available to higher income families, thus demonstrating that the credit was not intended to serve as public assistance legislation. ***In re* Beltz, 263 B.R. 525 (Bankr. W.D. Ky. 2001)**.

PREFERENTIAL TRANSFERS. The debtor owned a dairy farm which was operated by the debtor's son. The son often made personal payments for dairy expenses which were reimbursed by the debtor. The son made a $12,000 payment on an insurance premium for the debtor and, as usual, the debtor reimbursed the son for that expense. That reimbursement, however, was made within 90 days before the debtor filed for Chapter 11 bankruptcy. The case was converted to Chapter 7 and the trustee sought to recover the $12,000 reimbursement as a preferential transfer. The son argued that the son was not a creditor and the reimbursement was not for an antecedent debt. The court held that the son's payment of the debtor's insurance obligation created a debt prior to the reimbursement for that payment; therefore, the reimbursement was a preferential transfer and the son was required to return the reimbursement to the bankruptcy estate. The case gives no indication why the son did not raise the issue of the exception in Section 547(c) for payments made in the ordinary course of business for normal business expenses. ***In re* Mowry, 263 B.R. 499 (Bankr. W.D. Pa. 2001)**.

FEDERAL TAX -*ALM* § 13.03[7].*

DISCHARGE. The debtor filed for Chapter 7 and received a discharge. After the discharge, the IRS audited the 1987 tax return of a corporation owned by the debtor and terminated in 1988. The IRS determined that the corporation owed taxes for 1987 and that the debtor was personally responsible for those taxes because the corporation made distributions of property to the debtor in 1987. The debtor argued that the debtor's transferee liability for the corporation's taxes was not a tax; therefore, the liability was discharged in the Chapter 7 case. The court held that I.R.C. § 6901(a) provided for collection of transferee liability in the same manner as collection of a tax liability; therefore, the debtor's transferee liability was in the nature of a tax and was not discharged in the Chapter 7 case. **In re McKowen, 263 B.R. 618 (D. Colo. 2001)**.

PREFERENTIAL TRANSFERS. The debtor was a general partnership. The general partner had fraudulently claimed income for the partnership from fake sales transactions. The partnership paid the income tax liability of its partners at the direction of the general partner, based on the inflated partnership income. When the limited partner learned that the income was falsely inflated, the limited partner had the partnership file amended returns which resulted in refunds to the limited partner. The trustee sought to recover from the IRS the excess tax payments made by the partnership to the IRS. The IRS argued that it was not an "initial transferee" of the tax payment because it did not exercise dominion and control over the funds since it was required to refund the money to the limited partner. The court held that the IRS did exercise some control over the taxes because it did not refund the entire amount to the limited partner. The IRS also argued that the partners were the initial transferees because the tax payments were made on their behalf by the debtor. The court held that an issue of fact remained as to whether the limited partner participated in the initial payment of taxes by the partnership for the partners, in which case, (1) the IRS was not the initial transferee of the limited partner's taxes and (2) the IRS was an immediate or mediate transferee. The court did not decide the remaining issue of whether the IRS, as an immediate or mediate transferee, received the transfer of funds for value, and in good faith, without knowledge of the voidability (if appropriate) of the transfer, in which case the taxes could not be recovered from the IRS. ***In re* C.F. Foods, L.P., 2001-2 U.S. Tax Cas. (CCH) ¶ 50,599 (Bankr. E.D. Pa. 2001)**.

ENVIRONMENTAL LAW

CLEAN WATER ACT. The defendant operated a dairy farm. Animal waste from the farm was stored in holding ponds, sprayed onto fields and stored on the defendant's land. The plaintiffs were owners of land which was downstream from the defendant's dairy farm. The plaintiffs alleged two types of pollution of a stream governed by the Clean Water Act (CWA). The first type of alleged pollution was surface runoff of animal wastes into surface streams and canals which fed into the CWA-governed stream. The second type alleged that animal wastes seeped through the soil into underground water which percolated into streams which fed the CWA-governed stream. The defendant initially challenged the standing of the plaintiffs. The plaintiffs alleged that the pollution runoff prevented them from using their ponds for canoeing, fishing and swimming. The court held that the plaintiffs alleged sufficient injury for standing to bring the CWA suit. The court also held that standing was supported by the allegations and supporting affidavits demonstrating the causal connection between the animal waste disposal activities of the defendant and the resulting injury to the streams and ponds near the plaintiffs' land. The defendant had obtained an NPDES permit and argued that the permit negated any violation of the CWA and the CWA pollution issues were moot. The court held, however, that, because the plaintiffs filed affidavits that the permit limit was being violated, the plaintiffs had sufficiently alleged a continuing violation of the CWA. The defendant also argued that the waters alleged to be polluted by the animal waste runoff were not "waters of the United States" governed by the CWA. The court held that, because the plaintiffs alleged that the pollution reached a stream which qualified as a "water of the United States," the pollution of tributaries and feeder streams was governed by the CWA, even though the tributaries and feeder streams were not "waters of the United States." The more difficult question involved whether pollution that first entered the groundwater before reaching CWA-governed waters was also covered under the CWA. The court acknowledged the split of authority on this issue and held that the CWA governed pollution which first enters groundwater before affecting CWA-governed waters. The court noted that the plaintiff still had to prove that the defendant's animal wastes which were absorbed into the soil did affect CWA-governed waters. **Idaho Rural Council v. Bosma, 143 F. Supp.2d 1169 (D. Idaho 2001)**.

FEDERAL AGRICULTURAL PROGRAMS

BRUCELLOSIS. The APHIS has adopted as final regulations amending the brucellosis regulations to change the classification of Oklahoma from Class A to Class Free. **66 Fed. Reg. 45749 (Aug 30, 2001)**.

DISASTER ASSISTANCE. The CCC has announced the revised eligibility requirements for benefits under the 1998 Crop Loss Disaster Assistance Program multi-year provision. All interested parties must file applications prior to close of business on September 14, 2001. **66 Fed. Reg. 45276 (Aug. 28, 2001)**.

FARM LOANS. The FSA has announced the end of a temporary suspension, effective August 23, 2001, of direct and guaranteed farm ownership and farm operating loan financing for the construction of specialized facilities used for the production of hogs. **66 Fed. Reg. 44330 (Aug. 23, 2001)**.

POLITICAL QUESTION DOCTRINE. The plaintiffs were farmers who sought declaratory and injunctive relief against the President, the Secretary of Agriculture and the Secretary of the Treasury. The plaintiffs sought, in essence, an order requiring the defendants and their agents to maintain market conditions favorable to small farmers. Although the court acknowledged that the small farmer of America continues to face tough economic conditions, the court held that the suit involved only nonjusticiable political questions and dismissed the suit. **Schroder v. Bush, No. 00-1357 (10th Cir. 2001)**, ***aff'g, sub nom*****, Schroder v. Clinton, No. 00-CV-154-K (D. Colo. July 6, 2000)**.

SCRAPIE. The APHIS has adopted as final regulations which restrict the interstate movement of sheep and goats from states that do not follow effective flock management practices for scrapie. The regulation amendments also require animal identification for sheep and goats moving interstate and reinstate a scrapie indemnity program to compensate owners of certain animals destroyed due to scrapie. **66 Fed. Reg. 43963 (Aug. 21, 2001)**.

WETLANDS. The plaintiff had received permission to repair drainage tile on a tract of land. The drainage tile was part of a drainage tile system which extended onto a neighboring parcel also owned by the plaintiff. The USDA, however, charged the plaintiff with conversion of wetlands on the neighboring parcel. Apparently the plaintiff's repair of the drainage tile either affected the neighboring parcel or the plaintiff repaired more tile than was allowed under the permit. The plaintiff received a final lower administrative ruling which ruled that the plaintiff had improperly converted the wetlands on the neighboring parcel and gave the plaintiff 30 days to appeal that decision. The plaintiff alleged that an appeal was timely mailed to the National Appeals Division (NAD). The NAD denied an appeal because it asserted that no appeal was received by the NAD. The plaintiff argued that the appeal papers must have been lost in the mail or by the NAD and provided evidence of the mailing. The NAD refused to consider the plaintiff's evidence of a mailing as "extenuating circumstances" and held that the plaintiff had not demonstrated "good cause" for acceptance of a late filed appeal. The court first ruled that the denial of the appeal was reviewable by the court as a final administrative decision. Next, the court held that the NAD had used the incorrect standard in ruling that "good cause" for the late appeal was not shown. The proper standard was whether extenuating circumstances had been shown for the late appeal. The court held that the NAD denial of the appeal was improper in that the NAD failed to consider the plaintiff's evidence of a mailing as extenuating circumstances. The court noted that the NAD had not presented any evidence that the NAD staff did not lose the appeal. **Branstad v. Veneman, 145 F. Supp.2d 1011 (N.D. Iowa 2001)**.

FEDERAL ESTATE AND GIFT TAX

VALUATION. The decedent owned two ranches, one of which was leased to one son and the other leased to another son. Both leases were written and contained specific options for renewal. Under the decedent's will the two sons inherited the two ranches in equal shares. The sons were appointed executors of the estate and, as executors, executed five year leases with five year renewal options. The estate claimed that these leases were written versions of an oral extension granted by the decedent before death and that the leases decreased the value of the decedent's interest in the ranches. The IRS argued that no oral lease modification existed and that any modification of the original leases had to be written in order to be valid under Texas law. The court held that no oral modification of the written lease existed and that the written five year leases were ineffective to decrease the value of the ranches in the estate. The court noted that the leases were unnecessary in that the sons received the ranches under the will. **Estate of Edwards v. Comm'r, T.C. Memo. 2001-229**.

FEDERAL INCOME TAXATION

APPEALS. The taxpayer had filed a gift tax return and paid tax. The taxpayer later filed an amended return which showed no tax due but the IRS denied the claim for refund of the gift tax paid. The taxpayer sought judicial review of the IRS denial but the IRS decided to concede the issue and moved to dismiss the case. The taxpayer sought attorney's' fees and court costs. The IRS argued that its concession of the tax issue was a substantially justified position and, under I.R.C. § 7430, no attorney fees could be awarded. The court held that the focus of the Section 7430 inquiry could be at two levels, the administrative appeal level and the judicial review level. The court held that the IRS position at the administrative appeal level was not substantially justified; therefore, the attorneys' fees at the judicial level were allowed. **Regimbal v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,583 (E.D. Wash. 2001)**.

BUSINESS EXPENSES. The taxpayer was employed as a computer instructor/systems analyst for three employers. The taxpayer claimed income and deductions related to the employment on Schedule C. The taxpayer did not provide any evidence of a business except for the filing of Schedule C and had few records to support any of the expenses claimed. The court held that the taxpayer was an employee and did not operate a trade or business and that most of the deductions were disallowed for lack of substantiation. **Humble v. Comm'r, T.C. Summary Op. 2001-129**.

C CORPORATIONS-ALM § 7.02*.

STOCK REDEMPTIONS. The taxpayer wholly-owned two corporations. The taxpayer became indebted to the first corporation through direct distributions, corporate payment of personal obligations and distributions which the taxpayer contributed to the second corporation. The taxpayer's indebtedness to the first corporation was released in exchange for stock in the second corporation. The IRS characterized the stock exchange as a stock redemption subject to recognition of gain and loss under I.R.C. § 304. The taxpayer argued that (1) Section 304 was not intended to apply to this transaction and (2) an exception for stock acquisition indebtedness applied in this case. The court held that Section 304 did apply to the transaction because the taxpayer retained control over both corporations and the stock was exchanged for property, the release of indebtedness. The court also held that the exception applied only to the portion of the indebtedness to the first corporation which was used to acquire an additional capital interest in the second corporation. Because the remainder of the debt was used for the taxpayer's personal purposes, that debt was subject to Section 304 and had to be treated as a stock redemption under I.R.C. §§ 301 or 302. The court held that Section 302 did not apply because (1) the transfer was essentially equivalent to a dividend, (2) the transfer did not change the taxpayer's control of the corporations, (3) the transfer did not cause a termination of the corporations, and (4) the transfer did not cause a partial termination of the corporations. The court held that the transfer of stock in exchange for the release of indebtedness, except for the portion characterized as debt for acquisition of the second corporation's stock, was taxed as a dividend to the taxpayer. **Combrink v. Comm'r, 117 T.C. No. 8 (2001)**.

CAPITAL ASSETS. The taxpayer was a partnership which owned and operated a ranch. When the ranch was purchased in 1976, it did not have any irrigation water rights but the taxpayer expected that such rights could be acquired because the land qualified for irrigation water. In 1983, the taxpayer acquired irrigation water use rights under a state-federal water use program for water from the lower Colorado River. In 1993, the federal government purchased these water use rights from the taxpayer and the issue was whether the water use rights were capital assets or whether the proceeds from the relinquishment of the rights were ordinary income. The Tax Court held that the water use rights were capital assets because (1) the water use rights arose from the ownership of the land, (2) the water was used in the business of the partnership but was not resold as a commodity or otherwise used directly to produce ordinary income for the taxpayer, and (3) the taxpayer had to purchase water from another source. The IRS argued that no sale or exchange occurred because the taxpayer's receipt of the funds was subject to reimbursement of the water irrigation district in case the sale was revoked. The court held that, although a reimbursement liability existed, the funds were transferred primarily as compensation for relinquishment of the water use rights; therefore, a sale did occur. The taxpayer argued that a portion of its tax basis in the land could be allocated to the water use rights relinquished. The court found that the original purchase price of the ranch did not include any cost for water use rights because the water use rights did not exist when the ranch was purchased; therefore, the Tax Court held that no tax basis of the land could be allocated to the water use rights. On appeal, the appellate court reviewed only the third holding that the taxpayer had no income tax basis in the water rights from the purchase of the land. The appellate court focused on the assertion that the price paid for the ranch included a premium for the expected water rights; therefore, that portion of the purchase price could be allocated to the water rights when sold. The appellate court cited *Rev. Rul. 86-24, 1986-1 C.B. 80*, which held that a portion of the purchase price of impregnated cows could allocated to the calves. The case was remanded to determine, if possible, the premium paid for the land which could be allocated to the water rights. The court noted that, under *Inaja Land Co., Ltd. v. Comm'r, 9 T.C. 727 (1947)*, if the premium could not be determined, the taxpayer may be allowed to allocate all of the ranch cost/basis to the water rights. **Gladden v. Comm'r, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,597 (9th Cir. 2001), *rev'g and rem'g*, 112 T.C. 209 (1999)**.

DEPRECIATION. The taxpayers purchased rental real estate and held the property for over 14 years. The taxpayers made capital improvements to the property. The taxpayers did not claim any depreciation deductions for the entire 14 years. The taxpayers sold the property and deducted from the sale proceeds the property and water taxes owning against the property. The taxpayers used their undepreciated basis to determine that the sale of the property produced a loss. The court held that the real estate taxes and water taxes were not chargeable against the sale proceeds. In addition, the court held that the taxpayers' basis in the property had to be decreased by the amount of depreciation deductions allowable over the 14 years. Thus, the sale of the property produced gain to the taxpayers. **Jakubowski v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,594 (10th Cir. 2001), *aff'g*, 2000-2 U.S. Tax Cas. (CCH) ¶ 50,604 (D. Colo. 2000)**.

DISASTER PAYMENTS. On August 15, 2001, the President determined that certain areas in Tennessee were eligible for assistance under the Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, as a result of severe storms and flooding that began on July 27, 2001. **FEMA-1387-DR**. On August 15, 2001, the President determined that certain areas in Kentucky were eligible for assistance under the Act as a result of severe storms and flooding beginning on July 27, 2001. **FEMA-1388-DR**. On August 16, 2001, the President determined that certain areas in the District of Columbia were eligible for assistance under the Act as a result of severe storms, flooding and mudslides beginning on August 10, 2001. **FEMA-1389-DR**. Accordingly, a taxpayer who sustained a loss attributable to the disasters may deduct the loss on his or her 2000 federal income tax return.

DISCHARGE OF INDEBTEDNESS. The taxpayer purchased unemployment insurance for the taxpayer's credit cards. The insurance company made payments on the cards during two year when the taxpayer was unemployed. The taxpayer continued to make purchases with the cards and the cards accrued interest during these two years. The court held that the insurance payments were income to the taxpayer. **Huynh v. Comm'r, T.C. Summary Op. 2001-131**.

INCOME. The IRS has announced that it will revise the 2001 instructions for Form 1040 and Publication 17, to inform Holocaust victims or their heirs about the income exclusion provided by EGTRRA 2001 for restitution payments currently being made by European governments and industries. Revisions also are planned for Publication 553, which will highlight tax law changes for 2001, and Publication 525, which will define taxable and nontaxable income. **IR-2001-75**.

INTEREST. The taxpayer, a corporation, timely filed returns for several years. The returns were audited and a tax deficiency plus interest was assessed. The taxpayer claimed a deduction for the interest paid as a specified liability loss under I.R.C. § 172(f). The court upheld this deduction. The IRS argued that interest accrued within three years before the tax year the interest deduction was claimed was disallowed under I.R.C. § 172(f)(1)(B)(i). The IRS argued that the event which controlled the three year limit was the accrual of the interest. The court disagreed, holding that the defining event was the filing of the erroneous return; therefore, because the returns were all filed more than three years before the deduction was claimed, all the interest was deductible. The appellate court affirmed in a decision designated as not for publication. **Host Marriott Corp. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,580 (4th Cir. 2001), *aff'g*, 113 F. Supp.2d 790 (D. Md. 2000)**.

PENSON PLANS. For plans beginning in August 2001, the weighted average is 5.79 percent with the permissible range of 5.21 to 6.08 percent (90 to 106 percent permissible range) and 5.21 to 6.37 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 2001-52, I.R.B. 2001-35, 203**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

TRUSTS. The IRS has issued proposed regulations which incorporate changes made to Code Sec. 1361 by the Small Business Job Protection Act of 1996, Pub. L. No. 104-88, to provide that a testamentary trust could be a permitted shareholder of an S corporation for a two-year period. The 1996 amendments also provided that a former qualified subpart E trust would be a permitted shareholder for a two-year period whether or not the entire corpus was included in the deemed owner's gross estate. The proposed regulations eliminate the special rules for determining whether trusts consisting of community property qualify for the two-year period. The proposed regulations refer to electing small business trusts (ESBTs), which were added by the 1996 Act, and provide that certain former qualified subpart E trusts and testamentary trusts could continue as permitted shareholders after the end of the two-year period by becoming ESBTs. The proposed regulations reflect law changes (1) allowing certain exempt organizations to be S corporation shareholders for post-1997 tax years and (2) increasing the number of permissible S corporation shareholders from 35 to 75. The proposed regulations clarify that a current income beneficiary of a testamentary trust that satisfies the QSST requirements could make a QSST election at any time during the two-year period in which the trust is a permitted shareholder in the 16-day-and-two-month period beginning on the date after the two-year period ends. Pursuant to this provision, a testamentary trust would continue as a permitted shareholder after the end of the two-year period by becoming an electing QSST. Once the trust becomes an electing QSST, the beneficiary would be treated as the shareholder of the S corporation as of the effective date of the QSST election. **66 Fed. Reg. 44565 (Aug. 24, 2001), amending Treas. Reg. § 1.1361-1**.

SAFE HARBOR INTEREST RATES
September 2001

	Annual	Semi-annual	Quarterly	Monthly
Short-term				
AFR	3.82	3.78	3.76	3.75
110 percent AFR	4.20	4.16	4.14	4.12
120 percent AFR	4.59	4.54	4.51	4.50
Mid-term				
AFR	4.82	4.76	4.73	4.71
110 percent AFR	5.31	5.24	5.21	5.18
120 percent AFR	5.79	5.71	5.67	5.64
Long-term				
AFR	5.57	5.49	5.45	5.43
110 percent AFR	6.13	6.04	6.00	5.97
120 percent AFR	6.70	6.59	6.54	6.50

Rev. Rul. 2001-43, I.R.B. 2001-36.

WITHHOLDING TAXES. The taxpayer was a professional baseball team which was required to pay back wages under an employment settlement. The employees who received the payments did not work for the team in the year the back wages were paid. The Sixth Circuit Court of Appeals held that, under *Bowman v. United States, 824 F.2d 528 (6th Cir. 1987)*, the wages were taxable under the FICA and FUTA rules in effect in the years the wages were earned, not when they were paid. The Sixth Circuit case was designated as not for publication. The U.S. Supreme Court reversed, holding that the back wages were to be taxed under FICA and FUTA tax rules in effect in the year the back wages were paid and not when the wages were earned. The final judgment was entered by the District Court pursuant to the U.S. Supreme Court ruling. **Cleveland Indians Baseball Co. v. United States, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,593 (D. Ohio 2001), *on rem from*, 2001-2 U.S. Tax Cas. (CCH) ¶ 50,517 (6th Cir. 2001), *on rem from*, 2001-1 U.S. Tax Cas. (CCH) ¶ 50,341 (S. Ct. 2001), *rev'g*, 215 F.3d 1325 (6th Cir. 2000)**.

STATE REGULATION OF AGRICULTURE

MILK. The plaintiffs were Nevada dairy producers who sold milk to California processors. The plaintiffs challenged the California milk price stabilization program as violating the Commerce Clause of the U.S. Constitution. The court held that the case was governed by the holding of *Shamrock Farms Co. v. Veneman, 146 F.3d 1177 (9th Cir. 1998)*, which held that the California program was immunized from Commerce Clause challenges by Section 144 of the 1996 Farm Bill. The plaintiffs also alleged that the program violated the Equal Protection Clause but the court held that the issue was insufficiently pled because the petition failed to allege facts to demonstrate that the classifications of producers are arbitrary or that they are not rationally related to legitimate state interests. **Ponderosa Dairy v. Lyons, No. 99-16981 (9th Cir. Aug. 9, 2001)**.

ZONING

EXCLUSIVE FARM USE ZONE. A city owned land in an exclusive farm use zone and sought permission to spread pretreated waste effluent onto land to irrigate and fertilize poplar trees which would eventually be sold. The plaintiff was a neighboring land owner who challenged the proposed use of the land as violating the use restrictions of the zoning ordinance for an exclusive farm use zone. The plaintiff argued, and the Land Use Board of Appeals agreed, that the proposed use was a utility facility and required a finding that the facility could not be operated on other land. The court reviewed the legislative history of Or. Rev. Stat. § 215.283(1)(d) which defined a "utility facility" to mean equipment or apparatus. The court held that, in this case, the only equipment was the spraying equipment used to apply the effluent to the ground. The actual treatment, if any, of the effluent occurred through the natural absorbion of the effluent by the ground and the tree roots. Because the treatment was done by the ground and roots, there was no equipment used in the treatment of the effluent and no utility facility would exist on the land. The court held that the proposed use of the effluent was a farm use compatible with the exclusive farm use zoning. **Cox v. Polk County, 25 P.3d 970 (Or. Ct. App. 2001)**.

CITATION UPDATES

Estate of Burchell v. United States, 146 F. Supp. 382 (S.D. N.Y. 2001) (estate valuation), see p. 101 *supra*.

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The seminar are held on Tuesday, Wednesday, Thursday, and Friday. Registrants may attend one, two, three or all four days, with separate pricing for each combination. On Tuesday, Dr. Harl will speak about farm and ranch income tax. On Wednesday, Dr. Harl will cover farm and ranch estate planning. On Thursday, Roger McEowen will cover farm and ranch business planning. On Friday, Roger McEowen will cover current developments in several other areas of agricultural law. Your registration fee includes comprehensive annotated seminar materials for the days attended which will be updated just prior to the seminar. The seminar materials will also be available on CD-ROM for a small additional charge. A buffet lunch and break refreshments are also included in the registration fee.

Here are some of the major topics to be covered:

- **Economic Growth and Tax Relief Reconciliation Act of 2001**
- Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.
- Taxation of debt, taxation of bankruptcy, the latest on SE tax of rental of land to a family-owned entity; income averaging; earned income credit; commodity futures transactions; paying wages in kind.
- Farm estate planning, including 15-year installment payment of federal estate tax, co-ownership discounts, alternate valuation date, special use valuation, family-owned business deduction (FOBD), marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, trusts, and generation skipping transfer tax.
- Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.
- Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.
- Legal developments in farm contracts, secured transactions, bankruptcy, real property, water law, torts, and environmental law.

Special room discounted rates are available at the hotel for seminar attendees.

The seminar registration fees for current subscribers (and for multiple registrations from one firm) to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law* are $180 (one day), $345 (two days), $500 (three days), and $650 (four days). The registration fees for nonsubscribers are $200, $385, $560 and $720, respectively. **Please Note**: the registration fees are higher for registrations within 7 days prior to the seminar, so please call for availability and the correct fees. More information and a registration form are available online at **www.agrilawpress.com**

For more information, call Robert Achenbach at 1-541-302-1958, or e-mail to **robert@agrilawpress.com**